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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

KENNETH M. GOLDMAN,

Plaintiff and Appellant,

v.

PROFESSIONAL NUMISMATISTS
GUILD, INC.,

Defendant and Respondent.

B206242

(Los Angeles County
Super. Ct. No. BS111112)

APPEAL from an order of the Superior Court of Los Angeles County, Terry
A. Green, Judge. Reversed.

Dennison, Bennett & Press and James H. Goudge for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith and William John Rea, Jr., for Defendant and
Respondent.

Kenneth Goldman appeals from the denial of his petition to compel arbitration of a dispute with the Professional Numismatists Guild (PNG). We conclude there was an agreement to arbitrate, and reverse the order.

FACTUAL AND PROCEDURAL SUMMARY

A detailed chronology is a necessary part of this factual summary, as the determination whether the parties agreed to arbitrate their dispute is based in large part on the timing of their communications.

Respondent PNG is a membership organization, consisting of professional numismatists who deal in items such as rare coins, medals, tokens and paper currency. Appellant is a member of PNG.

In 2005, a dispute arose between appellant and another PNG member, Stuart Levine. The dispute was resolved by PNG arbitration in appellant's favor in January 2006. Subsequently, appellant came to believe there were irregularities in PNG's handling of the arbitration proceedings, which he attempted to investigate.

On September 14, 2006, he signed a letter agreement in which he agreed to end his dispute with Levine, and "immediately terminate all proceedings relating to that dispute, whether at PNG, ANA [American Numismatic Association] or otherwise." He agreed that if he brought "any claim, complaint or action of any kind relating to this dispute, or any part of this dispute, in any forum whatsoever, or relate[d] any information relating to the dispute to any third party" he would be subject to immediate suspension or expulsion from PNG, without notice or an opportunity to address the Board on the matter.

In early October 2006, PNG learned that appellant had not withdrawn his ANA complaints relating to his dispute with Levine. Accordingly, by letter dated October 6, 2006, Robert Brueggeman, executive director of PNG, suspended appellant's PNG membership, subject to ratification by the PNG Board at its January 2007 meeting.

On November 17, 2006, appellant sent PNG a request to arbitrate his suspension pursuant to PNG rules and regulations. He asked for an expedited date during a convention to be held in January.

In December 2006, appellant's counsel sent a demand letter seeking \$100,000 and other non-monetary relief from PNG, its individual Board members, executive director Robert Brueggeman, and PNG counsel Armen Avartian.

On February 16, 2007, PNG counsel sent an e-mail to appellant which stated: "The PNG Board has approved AAA arbitration of your claims that PNG harmed you by (1) suspending you; and (2) publicizing the suspension. The conditions are as follows: (a) each side pays 50% of all arbitration costs; (b) the arbitration takes place in Long Beach during the September 2007 Long Beach Expo; (c) you formally release any claims you might have against any Board member, Bob Brueggeman, or myself personally. [¶] If this is agreeable to you, please confirm to me in writing and I will prepare the release and AAA submission agreement."

On March 26, 2007, appellant's counsel wrote to PNG's counsel with regard to the proposed scope of the AAA arbitration: "First, restricting the arbitration to claims that Mr. Goldman was harmed by PNG's suspension of his membership and by publicizing the suspension does not accurately address Mr. Goldman's claims against PNG. It is not only the case that PNG has damaged Mr. Goldman by its conduct but that PNG's suspension of his membership violated PNG's by-laws and was therefore void. PNG also violated its arbitration rules and by-laws on numerous occasions commencing with PNG permitting unauthorized, undisclosed witnesses to testify at the January 2006 FUN arbitration of Mr. Goldman's dispute with Stuart Levine. Therefore, the scope of any AAA Arbitration must be broad enough to address what Mr. Goldman views as continuing violations by PNG of its arbitration rules and its by-laws." The letter referenced a June 26, 2006 letter by appellant, and a December 22, 2006 letter by appellant's counsel, which apparently addressed the scope of arbitration requested by appellant. (These letters are not part of the record on appeal.) The March 26, 2007 letter concluded: "Lastly, I do not see why arbitration of this matter must be delayed. The September 2007 Long Beach expo is simply too remote in time. I suggest, and request on behalf of Mr. Goldman, that arbitration be scheduled for the June 2007 Long Beach expo. [¶] I will prepare any required AAA submission agreement. Please communicate PNG's

acceptance of these terms for AAA Arbitration at your earliest convenience and no later than April 2, 2007.”

PNG’s counsel replied to appellant’s counsel that its previous offer was “the offer, and that if Goldman wished to go forward, PNG expected an acceptance accompanied by the required releases.” Meanwhile, appellant’s suspension expired by its own terms in April 2007, and PNG published notice of appellant’s reinstatement.

On May 18, 2007, appellant’s counsel wrote to PNG’s counsel, stating that appellant had not abandoned his claim against PNG, and that counsel expected to prepare a “Submission to Dispute Resolution” within two weeks. On May 29, 2007, appellant’s counsel told PNG’s counsel he would receive the arbitration request very soon.

In mid July 2007, appellant sent to PNG’s counsel a proposed AAA submission to dispute resolution, which included a description of the nature of the dispute and a limited release of all claims. The proposed submission increased the damages being sought from the original \$100,000 to \$250,000 and added injunctive relief to the relief being sought.

On July 26, 2007, PNG sent an e-mail to appellant’s counsel, stating that “PNG has decided to table its response until the Board could reconsider the matter at PNG’s next scheduled Board meeting in early August at the ANA convention.” Appellant responded that he expected PNG to stand by its prior agreement to AAA arbitration.

On August 15, 2007, PNG’s counsel wrote to appellant’s counsel: “As indicated in my previous correspondence, PNG’s Board decided to reconsider, at its meeting earlier this month in Milwaukee, PNG’s position with respect to submitting to AAA arbitration of Mr. Goldman’s claims. Based on the results of that meeting, I have been instructed to advise you that PNG will not consent to AAA arbitration.”

Appellant filed a petition to compel arbitration. After hearing, the trial court denied the petition. This is a timely appeal from the order denying the petition to compel arbitration.

DISCUSSION

I

Appellant asserts two separate grounds to compel arbitration. First he claims the PNG by-laws specifically require arbitration of disputes between PNG members, and between a PNG member and PNG itself. This is too broad a reading of the operative provisions.

Appendix C of the by-laws sets out the rules for PNG arbitrations. Paragraph B of section 1 states: “PNG members consent to PNG arbitration of all disputes with other members or with the PNG *involving the purchase, sale, or trade of numismatic or related items*, and are prohibited from commencing judicial or other arbitral proceedings of such claims, except to obtain provisional remedies pending completion of PNG arbitration.” (Italics added.) As the italicized language makes clear, the agreement to arbitrate is limited to disputes involving purchase, sale or trade of numismatic items. The dispute appellant sought to arbitrate involved his suspension from the PNG and the PNG’s publication of that suspension. This is not a matter covered by the consent to arbitration.

Appellant notes that paragraph B of section 4, which addresses the right of non-members to arbitrate against members, is limited to claims involving “the purchase, sale, or trade of numismatic or related items.” He argues that paragraph C of section 4, addressing claims against PNG itself, does not contain such limiting language. He is correct, but that is because it provides that “For purposes of claims against the PNG, the PNG will be deemed a member of itself.” Under this provision, PNG is to be treated in the same manner as a PNG member for purposes of arbitration. And section 1, paragraph B contains the limitation on types of disputes to be arbitrated: “PNG members [and by virtue of section 4, paragraph C, PNG itself] consent to PNG arbitration of all disputes with other members or with the PNG involving the purchase, sale, or trade of numismatic or related items” Where, as here, the arbitration clause is not susceptible of an interpretation that covers the asserted dispute, a petition to compel arbitration should be denied. (See *Titolo v. Cano* (2007) 157 Cal.App.4th 310, 316-317.)

II

Appellant also claims there was an agreement to arbitrate which was negotiated between his attorney and PNG's attorney. This argument relies on an interpretation of the correspondence between the parties which we have set out in detail in the statement of facts.

"The right to arbitration depends upon contract; a petition to compel arbitration is simply a suit in equity seeking specific performance of that contract." (*Engineers & Architects Assn. v. Community Development Dept.* (1994) 30 Cal.App.4th 644, 653.)

"Whether the parties formed a valid agreement to arbitrate is determined under general California contract law." (*City of Vista v. Sutro & Co* (1997) 52 Cal.App.4th 401, 407.)

"An essential element of any contract is the consent of the parties, or mutual assent. (Civ. Code, §§ 1550, subd. 2, 1565, subd. 2.) Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror. (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 128, p. 153)" (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 270-271.)

Looking at the sequence of correspondence, on November 17, 2006, appellant "demand[ed] an arbitration on this matter as per the PNG rules and regulations." He asked that the arbitration be conducted during a convention in January 2007.

On February 16, 2007, PNG's counsel sent an e-mail to appellant's attorney, stating: "The PNG Board has approved AAA arbitration of your claims that PNG harmed you by (1) suspending you; and (2) publicizing the suspension. The conditions are as follows: (a) each side pays 50% of all arbitration costs; (b) the arbitration takes place in Long Beach during the September 2007 Long Beach Expo; (c) you formally release any claims you might have against any Board member, Bob Brueggeman, or myself personally. [¶] If this is agreeable to you, please confirm to me in writing and I will prepare the release and AAA submission agreement."

This was not an acceptance of appellant's November offer to arbitrate. "An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the

person accepting. A qualified acceptance is a new proposal.” (Civ. Code, § 1585.) PNG did not agree to appellant’s demand to arbitrate pursuant to PNG rules and regulations, but instead offered to arbitrate under the AAA. It presented three conditions to that arbitration, including a date in September, long after the January 2007 date in appellant’s demand. This constituted a new proposal.

Appellant’s March 26, 2007 response was not an acceptance of this proposal. Instead, appellant objected to the limited scope of the arbitration proposed by PNG, objected to the September 2007 date as too remote, and suggested a June 2007 date. This letter asked PNG to communicate its “acceptance of these terms” at its “earliest convenience and no later than April 2, 2007.” This was a new proposal, and PNG did not communicate acceptance before it expired on April 2, 2007.

According to the declaration of Armen Vartian, in response to appellant’s March 26 communication seeking different terms from those proposed by PNG, “I replied that this was the offer, and that if Goldman wished to go forward, PNG expected an acceptance accompanied by the required release.” This was a renewal of PNG’s February 16, 2007 offer.

Vartian’s declaration describes a letter from appellant’s counsel and a conversation with counsel during May 2007: “On May 18, 2007, Goldman’s counsel wrote me stating that Goldman had not abandoned his claim against PNG, and that he had a ‘Submission to Dispute Resolution’ document ‘on my desk’ which he expected to be ‘prepared [sic] in the next 10 days to two weeks’. On May 29, 2007 I met Goldman’s counsel at a coin convention and he again told me that the submission document was ‘on his desk’ and that I would have it very soon.”¹ There is no suggestion in the record that PNG communicated to appellant that the offer was no longer open, or that it would lapse if not accepted by a particular date.

Then, in July 2007, appellant sent to PNG’s counsel a submission to arbitration by the AAA, prepared on an AAA form and signed by appellant. It included a limited

¹ The May 18, 2007 letter is not part of the record on appeal.

release of all claims. In this submission, appellant asked that the arbitration be held during the September exposition in Long Beach, the same time proposed in PNG's February 16 offer.

The submission document described the dispute as arising from PNG's suspension of appellant's membership and its dissemination of notices of the suspension on the PNG website and in the Numismatic Press. An attachment page described the "Nature of Dispute." It stated, in part, that "[a]lthough the suspension for a period of six months has now expired, Mr. Goldman claims that he has been defamed and economically damaged by the suspension which he claims did not follow PNG bylaws and which was enacted by the executive director of PNG without Goldman being given the opportunity to address the board of PNG as provided in the PNG bylaws." It stated that appellant was seeking "monetary damages for defamation and injury to his business and injunctive relief by which Goldman seeks an order that PNG publish on its website, disseminate in the Numismatic Press and publish to its members the fact that the suspension of Goldman as a member of PNG was unauthorized by the bylaws of PNG, erroneously stated to be caused by the failure of Goldman to follow a PNG directive which is now acknowledged by PNG to be false and is void." Although much more detailed, this is consistent with PNG's description of the dispute in its February 16 e-mail approving AAA arbitration "of your claims that PNG harmed you by (1) suspending you; and (2) publicizing the suspension."

Appellant's July communication included a release of claims against the officers, directors and attorneys for the PNG "relating to any claims and damages" resulting from the PNG arbitration with Stuart Levine, and "any subsequent interactions relating to that arbitration or irregularities in that arbitration" including his suspension from membership and any damages for defamation relating to his suspension and the dissemination or publication of the suspension. This is consistent with the condition in the February 16 offer that appellant "formally release any claims you might have against any Board member, Bob Brueggeman, or myself personally."

The release provided that it would only take effect if the AAA arbitration went forward and concluded with an enforceable decision by the AAA arbitrator. This is not inconsistent with PNG's offer. Appellant was being asked to give up his right to pursue individual claims in exchange for an agreement to arbitrate. He merely conditioned the release on the occurrence of the desired arbitration.

There seems to be no real issue that appellant accepted the remaining term in the February 16 offer, that the parties each pay 50 percent of the arbitration costs. He made no counter-proposal, and respondent does not raise it as point of disagreement between the parties.

PNG argues that even if its counsel agreed with appellant's counsel on all material terms of an arbitration agreement, the agreement would be unenforceable because it was not signed by the parties. PNG's written communications to appellant regarding appellant's request for arbitration were made by its counsel, Armen Vartian. It was Mr. Vartian who sent the February 16 e-mail, he who rejected appellant's counteroffer, and he who told appellant's counsel that the February 16 proposal was "the offer." He instructed in the February 16 offer: "If this is agreeable to you, please confirm to me in writing and I will prepare the release and AAA submission agreement." He held himself out as having authority to receive appellant's acceptance of PNG's offer to arbitrate, and PNG did not disavow that ostensible authority. It cannot now do so.

Considering the chronology and content of the communications between the parties, we conclude there was an agreement to arbitrate this dispute. The trial court erred in denying the petition to compel arbitration.

DISPOSITION

The order is reversed. Appellant is to have his costs on appeal.

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EPSTEIN, P.J.

We concur:

MANELLA, J.

SUZUKAWA, J.